

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 DONNA R. NELSON, an individual ) Civil No. 07cv2367 LAB(RBB)  
12 and on behalf of the general )  
13 public, ) NOTICE AND ORDER FOR EARLY  
14 ) NEUTRAL EVALUATION CONFERENCE  
15 )  
16 Plaintiff, )  
17 )  
18 v. )  
19 )  
20 BIC USA, INC., a Delaware )  
21 corporation; DOES 1-100, )  
22 inclusive, )  
23 )  
24 Defendants. )  
25 \_\_\_\_\_ )  
26 )  
27 )  
28 )

29 Due to the Court's calendar and in order to encourage maximum  
30 participation of all litigants and the Court, good cause appears to  
31 continue the early neutral evaluation conference beyond forty-five  
32 days of the filing of the first answer.

33 IT IS HEREBY ORDERED that an early neutral evaluation of your  
34 case will be held on February 1, 2008, at 8:30 a.m. in the chambers  
35 of United States Magistrate Judge Ruben B. Brooks, United States  
36 Courthouse, 940 Front Street, Room 1185, San Diego, California.

37 Pursuant to Rule 16.1(c) of the Local Rules of the United  
38 States District Court for the Southern District of California, all

1 parties, claims adjusters for insured Defendants and non-lawyer  
2 representatives with full and unlimited authority<sup>1</sup> to enter into a  
3 binding settlement, as well as the principal attorneys responsible  
4 for the litigation, must be present and legally and factually  
5 prepared to discuss and resolve the case. Corporate counsel shall  
6 not appear on behalf of a corporation as the party representative  
7 who has the authority to negotiate and enter into a settlement.  
8 Failure to attend or obtain a proper excusal will be considered  
9 grounds for sanctions. (Where the suit involves the United States  
10 or one of its agencies, only counsel for the United States with  
11 full settlement authority need appear.) (If Plaintiff is  
12 incarcerated in a penal institution or other facility, the  
13 Plaintiff's presence is not required and Plaintiff may participate  
14 by telephone. In that case, defense counsel is to coordinate the  
15 Plaintiff's appearance by telephone.)

16 Plaintiff's(s') counsel shall give notice of the early neutral  
17 evaluation conference to all defendants filing an answer after the  
18 date of this notice.

19 All conference discussions will be informal, off the record,  
20 privileged and confidential. Absent good cause shown, if any  
21 party, counsel or representative fails to promptly appear at the

---

22  
23 <sup>1</sup> "Full authority to settle" means that the individuals at  
24 the settlement conference be authorized to fully explore settlement  
25 options and to agree at that time to any settlement terms  
26 acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph  
27 Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have  
28 "unfettered discretion and authority" to change the settlement  
position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D.  
481, 485-86 (D. Ariz. 2003). The purpose of requiring a person  
with unlimited settlement authority to attend the conference  
includes that the person's view of the case may be altered during  
the face-to-face conference. Pitman at 486. A limited or a sum  
certain of authority is not adequate. Nick v. Morgan's Foods,  
Inc., 270 F.3d 590 (8th Cir. 2001).

1 settlement conference, fails to comply with the terms of this  
2 Order, including the failure to timely provide the settlement  
3 conference memoranda WHEN REQUESTED, is substantially unprepared to  
4 meaningfully participate in the settlement conference, or fails to  
5 participate in good faith in the settlement conference, the  
6 settlement conference may be vacated and sanctions may be imposed  
7 pursuant to Rules 16(f) and 37(b)(2)(B), (C), and (D), Federal  
8 Rules of Civil Procedure.

9 In the event the case does not settle at the early neutral  
10 evaluation conference, the parties shall also be prepared to  
11 discuss the following matters at the conclusion of the conference:

12 1. Any anticipated objections under Federal Rules of Civil  
13 Procedure 26(a)(1)(E) to the initial disclosure provisions of  
14 Federal Rule of Civil Procedure 26(a)(1)(A-D);

15 2. The scheduling of the Federal Rule of Civil Procedure 26  
16 (f) conference;

17 3. The date of initial disclosure and the date for lodging  
18 the discovery plan following the Rule 26(f) conference; and

19 4. The scheduling of a case management conference pursuant to  
20 Federal Rule of Civil Procedure 16(b).

21 The Court will issue an order following the early neutral  
22 evaluation conference addressing these issues and setting dates as  
23 appropriate.

1 Questions regarding this case may be directed to the  
2 magistrate judge's research attorney at (619) 557-3404.

3  
4 Dated: January 8, 2008

  
RUBEN B. BROOKS  
United States Magistrate Judge

5  
6 cc: All Parties of Record  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 A Notice of Right to Consent to Trial Before a United States  
28 Magistrate Judge is attached for your information.

K:\COMMON\BROOKS\CASES\NELSON2367\ENENOT.wpd

**NOTICE OF RIGHT TO CONSENT TO TRIAL BY UNITED STATES  
MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a United States Magistrate Judge of this district may, upon the consent of all parties, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Consent forms are available in the Clerk's office. Counsel for the Plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of the Court. Only if all parties consent will the district judge or magistrate judge to whom the case has been assigned be informed of your decision.

Judgments of the United States Magistrate Judges are appealable to the United States Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure unless the parties at the time of their consent to trial before a magistrate judge agree upon review by the United States District Court.